



**TESTIMONY OF JAMES E. ROGERS
CHAIRMAN, CEO AND PRESIDENT
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BEFORE THE
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES
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Mr. Chairman and members of the Committee: I am delighted to be here today to share with you my thoughts on climate legislation and, specifically, the discussion draft that was circulated on March 31. My name is Jim Rogers and I am Chairman, CEO and President of Duke Energy Corporation. Duke Energy provides electric power to more than 11 million people in five states: North Carolina, South Carolina, Ohio, Indiana and Kentucky. Our diversified generation portfolio of 37,000 megawatts mirrors the mixture of supply in the U.S. as a whole with a blend of coal, nuclear, natural gas and hydropower. We have also made sizeable investments in renewables, notably wind where we have more than 500 megawatts in operation and another 5,000 megawatts under development in the western United States.

I was an early and outspoken advocate of climate legislation. But just as I have spoken of the need for the United States to move forward to address climate change, I have also discussed the importance of getting carbon legislation right, so it works not only for the environment but also for our customers, our 18,000 employees and millions of investors and the U.S. economy in general.

For Duke Energy, this is especially challenging. We are the third largest consumer of coal in the country and we emit, a little more than 100 million tons a year of carbon dioxide. In our Midwestern service territory, coal accounts for more than 90 percent of our electric generation, meaning those customers are particularly vulnerable to the cost increases that will occur when carbon becomes a regulated emission.

Our customers, and the millions of others who live in the 25 states where coal comprises a majority of electric generation, have been foremost in my mind as I have advocated for a federal economy-wide cap and trade program. Many of these people are hurting right now. The Midwest recession started long ago and has only deepened with the financial meltdown of 2008. I am mindful of my customers' concerns and fears as we move forward on climate change legislation.

And yet, we must move forward and so I congratulate Chairmen Waxman and Markey for continuing to advance the debate, educate members, test ideas and proceed toward mark-up. Science tells us we must act now. If we delay, it will be harder and more costly to manage the risk of climate change.

We also need to act now because the rest of the world is waiting. We can't solve this problem alone but I don't believe we can expect it to be solved at all unless we assert the leadership expected of a great power.

I am particularly pleased today that I have been invited to testify as a member of the United State Climate Action Partnership (USCAP). Duke Energy is a founding member of this unique coalition that includes both industry and environmental organizations. It has worked hard for more than two years trying to create a path forward for Congress to address climate change. I am proud of the consensus *Blueprint for Legislative Action* that emerged. While not resolving every issue, it does provide policy recommendations that, when combined, we believe will be economically and environmentally sustainable. We are pleased that the Committee has incorporated many of our recommendations into the discussion draft that is now being considered.

When we created this coalition back in the spring of 2006, we did so with no illusions – only hope. We knew that reaching consensus on an effective climate change policy would not be an easy task for such a diverse group. And trust me when I say this – it wasn't easy. But I believe the degree of difficulty and the diversity of our membership makes the agreements we forged that much more significant and, I hope, helpful to you.

As I have said many times, sound climate change legislation should be based on three equal tenants – protecting our environment, protecting the economy, and protecting consumers from unacceptably high price increases. Where this trio of goals intersects is the sweet spot where both political consensus and good public policy exists.

The discussion draft proposes an economy-wide cap and trade program and a cap trajectory that falls within the recommendations of the Blueprint, though I note that they are at the aggressive end of the range. It also proposes a greenhouse gas registry and acknowledges the need for significant cost containment mechanisms, including allowance banking and borrowing, multi-year compliance and the use of offsets as a low-cost emissions reduction strategy. It allows for a periodic assessment of the science to ensure we are on the path necessary to make a positive impact on the climate. Finally, there are provisions for implementation of a strategic reserve pool and recognition of the need to accelerate the development, deployment and commercialization of zero- and low-carbon technologies, including carbon capture and storage (CCS).

There is a good foundation here to build upon and the draft's 648 pages present enough material to start several lively conversations about a proposal that isn't just about climate change but, in fact, proposes a fundamental shift in U.S. energy policy.

Then there is the case of the missing pages. Those are the ones that contain the critical decision on how allowances will be distributed. Those pages, for Duke Energy and its customers, are the key to that third tenant of sound climate policy – protecting consumers from prices that increase so rapidly that they disrupt livelihoods. Ensuring that electric customers are treated fairly and not burdened with unnecessary cost increases is a mission from which I will not retreat.

In the last few weeks, I have been encouraged that our message linking allowance allocation and customer protection seems to be getting through. Unfortunately, this issue has been misunderstood and mischaracterized, confused with the environmental integrity of the cap, compared unfairly to the European Union Emissions Trading Scheme, and used to suggest utilities using coal were going to use the allowances to make windfall profits.

The fact is that USCAP has presented the Congress and this Committee with a path to smooth the transition to a low-carbon economy. To avoid any possibility of windfalls and to dampen the impact of climate policy on electricity consumers, USCAP proposes to allocate allowances to local distribution companies (LDCs). State regulators, who oversee these companies, will assure consumer costs are kept as low as possible. This concept has also been endorsed by the National Association of Regulated Utility Commissioners.

Let me be clear. There will be no windfall profits for utilities under this proposal – only customer protection. While the cap preserves the environmental integrity of the new regulatory program, the allowance allocation ensures cost impacts are mitigated for end-use energy customers. This is especially important for states where climate change will have the largest economic impact.

Conversely, a full auction of allowances hits consumers harder. While it may provide a steady revenue stream to the federal government, it will impact customers in coal-dependent states disproportionately by requiring utilities and their customers to buy allowances just to keep current facilities running. These same customers will then pay even more when their utilities make the significant capital investments necessary to meet the increasingly stringent cap.

The result? Let's take Indiana as an example. If carbon prices hit \$20 a ton in the first year of the program – which is not unrealistic – Hoosier customers under a full auction would see an immediate 30 percent rate increase from today's prices. If the same allowances, however, were allocated, customer cost increases probably could be kept in the single digits. And the difference in the two allocation methods in terms of the environment integrity of the program is zero...absolutely zero.

This 30 percent rate increase, by the way, does not include the 18 percent rate increase these customers will be paying for the next-generation integrated gasification combined cycle (IGCC) coal facility that Duke Energy is building in Edwardsport, Indiana, which we hope will become the first large CCS facility in the U.S. So, for anyone worried that allowance allocations will mask the carbon price, take a look at Indiana and you will see the future for all customers in our coal states. The transition of our current electricity generating fleet to zero- and low-carbon technology will be costly and consumers will feel a price signal.

While the discussion draft tracks the USCAP proposal fairly closely, there are a few specific recommendations I would like to make that I hope the Committee will consider.

- **Targets and timetables:** The discussion draft proposes to begin the program in 2012, using a 2005 baseline. The start-up date is the same that was used in the last Congress and now allows too little time to begin compliance. The early targets, while within the USCAP range, are very

aggressive. I would recommend the Committee follow President Obama's proposal of setting a near-term goal of achieving 1990 levels by 2020.

- **Offsets:** USCAP members recognized the need to promote offsets as a viable tool to provide cost-effective emission reductions. However, I was surprised the discussion draft discounts these allowances, requiring covered entities to turn in 1.25 offset credits in lieu of one emission allowance. I believe the Congress and subsequent rules will ensure these offsets are verifiable, permanent, measurable, enforceable and additional. They will be limited either legislatively or through a regulatory process that will make it challenging for projects to qualify. So why then, after the gold-plating, should they be discounted? Why, if companies can use them to achieve the same environmental benefit at a lower cost for their customers, does the government treat them as a compliance step-child?
- **Strategic Reserve Pool:** I am pleased the discussion draft recognizes the importance of the Strategic Reserve Pool as an essential cost containment measure. However, the details include a significant – perhaps prohibitive – barrier to effective use of the pool by initially including a minimum bid of two and a half times the price EPA estimates an allowance will cost. This trigger mechanism should be dropped and the Committee should encourage the viability of the pool by permitting these allowances to be released into the market when allowance prices reach a specific threshold price. This price should be set at a level that prevents undue economic harm from excessively high allowance prices (e.g. increases in the underlying price of natural gas due to fuel switching) and encourages technology transformation. The reserve pool trigger price should start out at a reasonable level and escalate over time to align with the establishment of commercially available technology that allows reductions to occur in an economically efficient manner. In order to be effective, the strategic reserve pool should contain an unlimited supply of offsets and the government must be empowered to fill and replenish it as needed.
- **Coal technology:** I appreciate that the discussion draft recognizes the importance of developing carbon capture and storage technology and incorporates Congressman Boucher's funding proposal. I do think more funding is needed, however, if this technology is to be accelerated and, to ensure the funding is stable and reliable, it needs to be provided outside the appropriations process. I also urge the Committee to provide more

guidance to EPA with respect to the legal, liability and storage rules they are directed to write. Early resolution of the rules is vital so that the earliest demonstration plants can come on line.

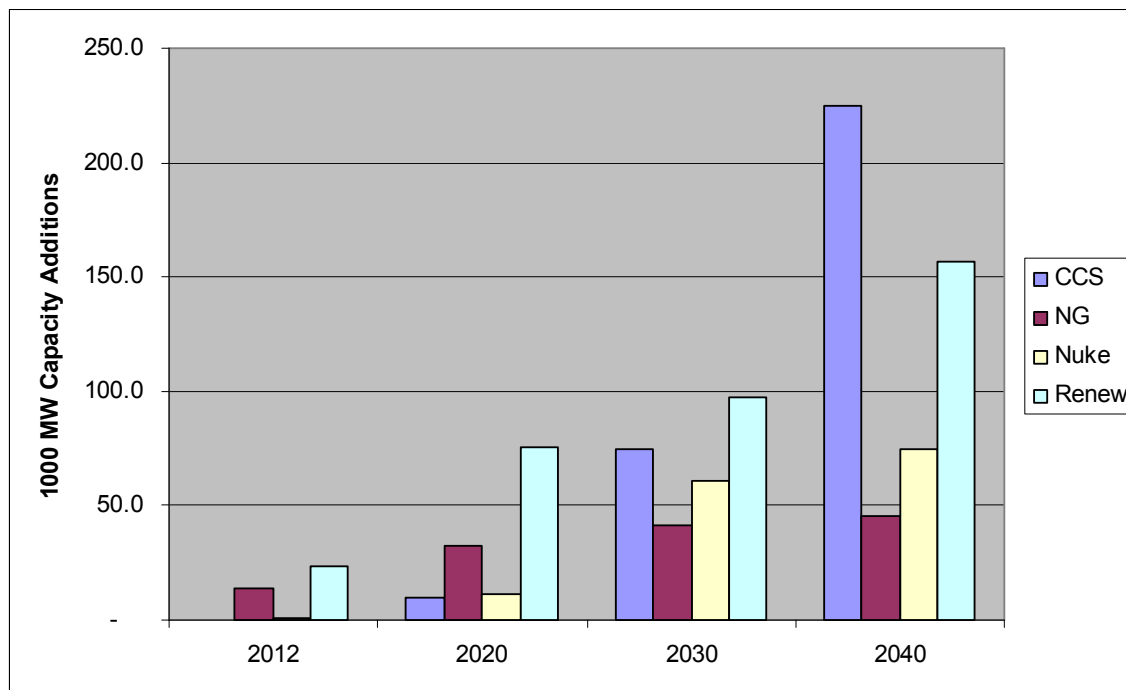
- Citizen suits: The proposal reducing legal barriers to filing citizen lawsuits either against the government or companies that emit greenhouse gases, I believe, is a prescription for regulatory chaos and uncertainty. We should spend our time, energy and money in addressing the problem – not tying the courts up in endless litigation.

Finally, I'd like to say a few words about the myriad of standards and mandates that are included in the discussion draft with this ambitious carbon reduction program.

Embedded in and surrounding this market-driven approach to carbon reduction is a proposed renewable electricity standard, an energy efficiency standard, a clean fuels standard, electric vehicle infrastructure requirements, a coal plant performance standard, a smart grid requirement and even a peak load shaving requirement. Some of these we have agreed to as part of the USCAP Blueprint; others, however, go above and beyond what the Blueprint ever anticipated.

My position on a renewable electricity standard is clear. I think this issue belongs, appropriately, to the states – 30 of which have already adopted one. These standards are not uniform, but neither is their renewable energy potential. Over the last few years, we have had an explosion in renewable energy development in the United States and the world. Wind consistently has been the fastest growing segment of energy production for the last five years or so. But even with this leap forward, we still have no evidence that wind or solar can be commercially viable in many parts of the country.

The fact is that a study by ICF International showed that, under a “medium” price scenario starting at \$22/ton CO₂, renewables enjoyed a steady growth through 2040, adding more than 156,000 megawatts of new capacity. It also showed that these were not spread out evenly throughout the country. This same analysis showed the deployment of 225,000 megawatts of coal with carbon capture and storage, demonstrating this isn't a problem that can be solved with only one technology.



So, if renewables are going to slide into the new economy because they become the lower cost option, why do we want to establish a public policy that forces them in at a higher price?

I understand there is passion on this Committee and elsewhere to push renewables to the front of the line. Renewables have been promoted heavily by Congress through numerous subsidies such as tax credits and grants. The proposed renewable electricity standard is just another way to push these technologies forward faster than the market may allow. This, of course, means the price of inserting these technologies will be higher.

The aggressive timeline to increase renewable generation, which currently stands at about two percent, is not about addressing climate change. It's a pre-determination as to technology choice and the speed of its installation. The discussion draft requires 6 percent renewables by 2012 and 8.5 percent by 2014. The timetables and levels are, in my judgment, unrealistic. We cannot design, permit and build a three-fold increase in renewable generation – as well as the necessary transmission -- in less than the two and a half years remaining before the first deadline. Instead of picking the technology, if we must have a standard, let's take the renewable electricity standard and the energy efficiency standard

and combine them into a single low-carbon electricity standard, without mandates for specific technologies.

Let's encourage any technology that delivers kilowatts to your home or business and leaves no carbon trail to qualify for the new standard. That means not just wind and solar but also energy efficiency, carbon capture and storage and nuclear.

As for the proposed energy efficiency standard, as co-chair of the National Action Plan on Energy Efficiency, I have been involved with a group of consumer advocates, state regulators, environmental groups, utilities and others which has developed a set of proposals that will achieve the goals in the discussion draft without resorting to specific mandates. We do this by changing the regulatory incentives for utilities, assuring a least cost approach.

On top of this standard are requirements to institute smart grid technologies which, despite my keen interest in this area, are as yet undefined. There is also a peak load shaving requirement and a host of electric vehicle infrastructure mandates. Combined, these efforts constitute an effort by Congress to remake the electric power system – a goal that I believe we should and will attain, but one that must be done thoughtfully and systematically.

USCAP did not come to an agreement on nuclear but I have said before and say again that a truly serious long-term carbon reduction plan is an empty plate unless we, as a nation, commit to making it possible once again to build nuclear power plants. Other countries will be deploying this technology to meet their carbon reduction commitments, and so should we.

I thank you again for the opportunity to testify and I trust you will treat my comments as they are intended – as positive contributions and suggestions to a discussion draft that, I sincerely hope, marks the beginning of constructive legislative process that ends within the next year to 18 months on the desk of President Obama.